IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 20TH JULY 2007 / 29TH ASHADHA 1929

WA.No. 2086 of 2006(D)

AGAINST THE JUDGEMENT IN WPC.15617/2004 Dated 05/07/2006
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APPELLANTS: PETITIONERS 1, 2, 3, 7, 8, 14, 15 & 16
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1. INDIRA P.S.,
(FORMERLY H.S.A., FACT SCHOOL, AMBALAMEDU),
ARAKKAL HOUSE, IV/67, IRIMPANAM P.O.,
TRIPUNITHURA.

2. SYNA M.R.,
(FORMERLY H.S.A., FACT SCHOOL, AMBALAMEDU)
CHEKKAYIL HOUSE, S.N. JUNCTION, TRIPUNITHURA,
ERNAKULAM DISTRICT.

3. SUJATHA. R.,
(FORMERLY H.S.A., FACT SCHOOL, AMABALAMEDU),
PADMALAYAM, THALAYOLAPARAMBU,
KOTTAYAM DISTRICT.

4. K.S. KRISHNAKUMARI AMMA,
(FORMERLY H.S.A., FACT SCHOOL, AMBALAMEDU),
KARUVELIL, EDAPPALLY P.O., KOCHI-24.

5. V.J. CELINE,
(FORMERLY H.S.A., FACT SCHOOL, AMBALAMEDU)
EDATTUKARAN HOUSE, A.K.G. ROAD,
THYKKOODAM P.O., VYTTILA, ERNAKULAM.

6. L. LAKSHMI,
(FORMERLY H.S.A., FACT SCHOOL, AMBALAMEDU)
`UTHRAM', PALACE GARDENS, KARINGACHIRA,
TRIPUNITHURA.

7. SARAMMA THOMAS,
(FORMERLY H.S.A., FACT SCHOOL, AMBALAMEDU)
KONDEKKERIL HOUSE, HILL PALACE P.O.,
TRIPUNITHURA.

8. PHILOMINA A.V.,
(FORMERLY H.S.A., FACT SCHOOL, AMBALAMEDU)

VAYALINKAL HOUSE, GARDEN LAND,
HILL PALACE P.O., TRIPUNITHURA.

BY ADV. DR.K.P.SATHEESAN
SRI.K.K.GOPINATHAN NAIR
SRI.M.R.JAYAPRASAD
SRI.K.K.RAJEEV
SMT.C.V.RAJALAKSHMI

RESPONDENTS: RESPONDENTS
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1. THE FERTILISERS AND CHEMICALS
TRAVANCORE LTD. (FACT IN SHORT)
REPRESENTED BY ITS CHAIRMAN AND
MANAGING DIRECTOR, UDYOGAMANDAL, ELOOR,
ERNAKULAM DISTRICT.

2. THE CHIEF MANAGER (PERSONNEL)
FACT COCHIN DIVISION, AMBALAMEDU,
ERNAKULAM.

3. UNION OF INDIA,
REPRESENTED BY ITS SECRETARY,
MINISTRY OF PETROLEUM AND CHEMICALS,
NEW DELHI.

R3 BY ADV. SRI.P.K.MOHAMMED PUZHAKKARA, ADDL.CGSC
R2 BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.P.PARAMESWARAN NAIR,ASG

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 20/07/2007 ALONG WITH WA NO. 1785 OF 2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & K.T. SANKARAN, J.

W.A.Nos.2086 of 2006 & 1785 of 2006

Dated, this the 20th day of July, 2007

JUDGMENT

H.L. DATTU, CJ.

The issues raised in these two appeals are common. Therefore they are clubbed together and disposed of by this common order.

2. The appellants in these two writ appeals were teachers working in the schools managed by the first respondent company. The company was forced to wind up the schools. This was brought to the notice of the teachers and the non-teaching staff working in the schools by the company by issuing a circular dated 28th February, 2004. The said circular was followed by another communication dated 24th March, 2004. In the circular as well as in the communication, the teachers were advised to avail the facility of the VRS scheme.

3. Since the schools were about to be closed due to the financial crisis faced by the company, the appellants accepted the facility of VRS scheme and thereafter received the benefits granted under the scheme.

4. Thereafter the appellants approached this court inter alia contending that the offer of VRS scheme and the acceptance of the same by the respondent company is arbitrary and illegal. The other request made in the writ petition was to direct the respondent company to re-deploy the petitioners and others in any sections of the company.

5. The learned Single Judge, after detailed discussion of the facts pleaded by the petitioners and others, has come to the conclusion that due to the financial crisis faced by the company, they had no other alternative but to wind up

the schools and after doing so they had offered the VRS scheme to its teaching and non-teaching staff. Petitioners are some of those who had opted for the VRS scheme and had received the benefits and, therefore, as a matter of right they cannot question either the VRS scheme offered by the company or the acceptance of the offer to retire from service voluntarily made by the petitioner by the respondent-company.

6. While disposing of the writ petition the learned Single Judge had directed the respondent company to come out with a scheme by which the petitioners can be accommodated in the company as and when vacancies arise in any section of the company subject to eligibility etc.

7. Sri Satheesan and Sri Ramakumar, learned counsel appearing for the appellants, would contend that the appellants are ready and willing to rejoin the respondent company, if they are offered suitable job in the company. The learned counsel Sri Ramakumar would also submit that the respondent company has not framed any scheme as directed by this court while disposing of the writ petition.

8. The learned counsel appearing for the respondent company would submit that immediately after the disposal of the writ petition by the learned Single Judge, the respondents have come out with a scheme for employment of the schools' staff who had availed the voluntary retirement benefit by its circular dated 17th October, 2006 and therefore submits that as and when vacancies would arise, the appellants would be offered job in the respondent company in the non-managerial posts, if they satisfy the eligibility criteria prescribed in the scheme.

9. The facts pleaded by the appellants would clearly demonstrate that the respondent company was unable to run the schools managed by them. Therefore they had to close down the schools and before doing so they had informed the teaching and non-teaching staff of the schools to accept the VRS scheme offered by the company so that they could have some monetary benefits. The appellants who were working as teaching or non-teaching staff accepted the offer so made by the company. Thereafter they also received all the monetary benefits. Having accepted the offer made in the scheme, in our opinion, they cannot turn round and contend that they are prepared to withdraw their applications filed for the benefit of the VRS scheme and also the monetary benefits received under the scheme.

10. In our opinion, since they have already accepted the VRS scheme and also the benefits under the said scheme, as a matter of fact, they cannot come before this court and contend that a direction should be issued to the company to re-deploy them as employees in other sections of the company. Further, the company has already come out with the scheme dated 17th October, 2006 as directed by this court. Unfortunately that scheme is also questioned by some of the teaching and non-teaching staff by filing a writ petition before this court. In view of that the appellants are not in a position to enjoy the scheme for re-employment that has been circulated by the respondent company.

11. In that view of the matter, the appellants are not entitled to any of the reliefs sought in these writ appeals. Therefore, the appeals require to be rejected and they are rejected. However, we make it clear that in the event of the recruitment of staff in the non-managerial categories as provided in the scheme,

the respondents may take into consideration the length of service of the appellants in the school run by the management and if some priority could be given to them, it would definitely help those teaching and non-teaching staff who are displaced from service half-way through their career.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

mt/DK